UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND
(Northern Division)

BLANCA "LORENA" P.
CEDILLOS-GUEVARA, *et al.*,

Plaintiffs,

v.

MAYFLOWER TEXTILE
SERVICES CO., *et al.*,

Defendants.

Case No. GLR-14-0196

Memorandum of Law in Support of Plaintiffs' Motion for Partial Summary Judgment on the Issue of Whether Mayflower Textile Services Co. is a Joint Employer of the Workers in Its Laundry Facility

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Defendant Mayflower Textile Services Co. ("Mayflower") seeks to evade its obligations under federal and state wage and hour laws by claiming that the majority of production workers in its commercial laundry facility in Baltimore, Maryland are employed only by labor contractor entities, including defendants East to West Enterprises, Inc., Argo Management Group, Inc., Industry Cleaning Service, LLC, Villy's Corporation, Service Industry Solutions, Inc., North East Employment, Inc., First Management, Inc., Skilled Instant Service, Inc., Valentin Abgaryan, John Williams, and Andrey Gustov (collectively "the labor contractors"). Notwithstanding the name of the business printed on each of these workers' paychecks, Mayflower retains near total control of the terms and conditions of these workers' employment, including: (a) granting initial approval to place each worker in the laundry; (b) supervising the day-to-day work of the workers; (c) sharing (with the labor contractors) the authority to discipline and terminate the workers; (d) furnishing the place of work and all of the equipment used by the workers; (e) sharing (with the labor contractors) the responsibility of maintaining payroll records for these workers; (f) training the workers; (g) assigning these workers to duties that are indistinguishable from those performed by Mayflower's direct employees; and (h) maintaining working relationships with the workers that are often long-term and exclusive.

As explained below, there is no genuine dispute as to any material fact on the issue of joint employment, and thus, under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, the Maryland Wage and Hour Law, Md. Code Ann., Lab. & Empl. §§ 3-401 *et seq.*, and the Maryland Wage Payment and Collection Law, Md. Code Ann., Lab. & Empl. §§ 3-501 *et seq.*, the Court should find as a matter of law that Mayflower Textile Services Co. is a joint employer of all the labor contractors' workers who work in its Baltimore commercial laundry facility.

Legal Standard

I. Partial Summary Judgment

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Price v. Atl. Ro-Ro Carriers*, 45 F. Supp. 3d 494, 500 (D. Md. 2014) (quoting Fed. R. Civ. P. 56(a)). "[T]his standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis in original, quotation marks deleted). "The court should view the evidence in the light most favorable to the nonmovant, and draw all inferences in her favor without weighing the evidence or assessing the witnesses' credibility." *Id. (*citing *Dennis v. Columbia Colleton Med. Ctr.*, Inc., 290 F.3d 639, 644-45 (4th Cir. 2002)) (quotation marks and ellipsis omitted).

Rule 56 provides for motions for partial summary judgment, stating that "a party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought." Fed. R. Civ. P. 56(a) (emphasis added). As this Court has observed, quoting the Advisory Committee Notes to the 1946 amendment to Rule 56, "[P]artial summary judgment is merely a pretrial adjudication that certain issues shall be deemed established for the trial of the case. This adjudication serves the purpose of speeding up litigation by eliminating before trial matters wherein there is no genuine issue of fact." *Rotorex Co. v. Kingsbury Corp.*, 42 F. Supp. 2d 563, 570-71 (D. Md. 1999) (ellipsis omitted). In this case, one large yet discrete issue concerns whether Mayflower Textile Services Co. is a joint employer of the workers in the case. Based on the undisputed evidence in the case, the Court can now hold that it is.

II. Joint Employment[1]

The Department of Labor regulations implementing the Fair Labor Standards Act provide that "[a] single individual may stand in the relation of an employee to two or more employers at the same time under the Fair Labor Standards Act of 1938, since there is nothing in the act which prevents an individual employed by one employer from also entering into an employment relationship with a different employer." 29 C.F.R. § 791.2(a). Upon a finding of joint employment, "all joint employers are responsible, both individually and jointly, for compliance with all of the applicable provisions of the act, including the overtime provisions, with respect to the entire employment for the particular workweek." *Id.*

Under this regulation, a joint employment relationship exists where an employee performs work simultaneously benefiting two or more employers, and

> there is an arrangement between the employers to share the employee's services, as, for example, to interchange employees; or (2) . . . one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee; or (3) . . . the employers are not completely dissociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.

29 C.F.R. § 791.2(b). "The ultimate determination of a joint-employer relationship will ultimately depend on the facts of each particular case." *Quinteros v. Sparkle Cleaning, Inc.*, 532 F. Supp. 2d 762, 773-74 (D. Md. 2008) (citing 29 C.F.R. § 791.2(a)). Because

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[1] Maryland courts have defined the Wage and Hour law as the state equivalent of the Fair Labor Standards Act, and interpreted provisions regarding joint employer status as applicable to both statutes. *See Newell v. Runnels*, 407 Md. 578, 649 (2009). The Maryland Court of Special Appeals has further held that the test for joint employment under the FLSA—the economic realities test—also applies to the Maryland Wage Payment & Collection Law. *See Campusano v. Lusitano Const. LLC*, 208 Md. App. 29, 36 (2012) ("For the following reasons, we decide—as a matter of first impression—that the [economic realities] test also applies to the Payment and Collection Law."). Thus, one analysis is sufficient in this case.

"the joint employment question must take into account the real economic relationship between the employer who uses and benefits from the services or workers and the party that hires or assigns the workers to that employer," an entity may be a joint employer even if the relationship does not fit squarely into the examples provided by the regulations; the Court must look at the totality of the circumstances and the economic realities of the employment relationship to determine if a joint employer exists. *See id.*; *Butler v. Drive Auto. Indus. of Am., Inc.*, 793 F.3d 404, 415 (4th Cir. 2015).

The Fourth Circuit recently articulated "a new set of factors for courts in this Circuit to use in assessing whether an individual is jointly employed by two or more entities":

> (1) authority to hire and fire the individual;
> (2) day-to-day supervision of the individual, including employee discipline;
> (3) whether the putative employer furnishes the equipment used and the place of work;
> (4) possession of and responsibility over the individual's employment records, including payroll, insurance, and taxes;
> (5) the length of time during which the individual has worked for the putative employer;
> (6) whether the putative employer provides the individual with formal or informal training;
> (7) whether the individual's duties are akin to a regular employee's duties;
> (8) whether the individual is assigned solely to the putative employer; and
> (9) whether the individual and putative employer intended to enter into an employment relationship.

Butler, 793 F.3d at 414. Under this test, the "principal guidepost" is whether the putative employer exercises control over the workers, but no factor is dispositive. *Id.* at 415.

Statement of Undisputed Material Facts

1. Mayflower Textile Services Co. is a Maryland corporation that operates a commercial laundry facility.[2] East to West Enterprises, Inc., Argo Management, Industry Cleaning Service, Villy's Corporation, Service Industry Solutions, Inc., North East Employment,

[2] Ex. 1 (Mayflower Answer to Interrog. No. 18); Ex. 2 (Kalra Decl., ECF No. 75-2) ¶ 4.

Inc., First Management, Inc., and Skilled Instant Service are Maryland corporations through which some employees at the Mayflower laundry facility are paid.[3] Mayflower pays these labor contractors for the labor performed at the Mayflower laundry, and in turn, the labor contractors pay the workers.[4] Every defendant pays or has paid at least one worker in the laundry, and some workers are paid by different defendants at different times. For example, Ms. Cedillos-Guevara and Mr. Nunez were paid by East to West Enterprises,[5] Mr. Kaneria was paid by Mayflower,[6] and Ms. Raudales was paid by First Management, Inc. and Skilled Instant Service.[7] Ms. Vargas was paid first by Argo Management, then by Villy's Corporation, and then again by Argo Management.[8] Ms. Chicas Rodriguez was paid by Industry Cleaning Service and was once paid by Service Industry Solutions, Inc.[9] Ms. Lopez was paid by East to West Enterprises and North East Employment,[10] and Maria Ramirez was paid by Mayflower, then John Williams and East to West Enterprises, and then again by Mayflower.[11]

2. Mukul Mehta is the President of Mayflower,[12] and Miamat Kalra is the vice president of operations at Mayflower.[13] Mr. Kalra oversees all of Mayflower's operations, including production and scheduling.[14] Mr. Kalra is in charge of the labor contracts and approves

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[3] Ex. 2 (Kalra Decl., ECF No. 75-2) ¶ 6; Ex. 1 (Mayflower Answer to Interrog. No. 19, 20).
[4] Ex. 3 (Ravikumar Dep.) 92:20-93:17; Ex. 4 (Kalra Dep.) 138:18-150:7.
[5] Ex. 5 (Cedillos Decl., ECF No. 27-1) ¶ 4; Ex. 6 (Nunez Decl., ECF No. 27-4) ¶ 5.
[6] Ex. 7 (Kaneria Answer to Interrog. No. 12).
[7] Ex. 8 (Raudales Answer to Interrog. No. 12).
[8] Ex. 9 (Vargas Decl., ECF No. 27-3) ¶ 5.
[9] Ex. 10 (Chicas Decl., ECF No. 27-2) ¶ 5.
[10] Ex. 11 (Lopez Answer to Interrog. No. 12).
[11] Ex. 12 (M. Ramirez Answer to Interrog. No. 12).
[12] Ex. 13 (Mehta Answer to Interrog. No. 3, 18).
[13] Ex. 2 (Kalra Decl., ECF No. 75-2) ¶ 1; Ex. 4 (Kalra Dep.) 10:4-12.
[14] Ex. 4 (Kalra Dep.) 33:20-34:11.

the placement of all workers on the laundry floor.[15] In conjunction with the labor contractors, Mr. Kalra sets the hourly wages for the labor contractor workers and exercises the authority to deny requested raises for these workers.[16] On at least one occasion, Mr. Kalra sent a prospective worker to a labor contractor to get employment at the laundry.[17] Mayflower advises the labor contractors if more workers need to be hired, or if there need to be layoffs.[18] For example, when Mayflower lost its contract with the Four Seasons Hotel in December 2014, Mr. Kalra informed the labor contractors that it needed 60 fewer hours of labor on certain machines, and the labor contractors laid off workers accordingly.[19]

3. Mayflower owns the facility at which Plaintiffs work and the equipment they use.[20] For instance, workers use a scale and a conveyor belt in the soil room as part of the laundry process, both of which are owned by Mayflower.[21] Plaintiffs understand that Mayflower owns the machines they operate.[22]

4. Regardless of whether they are paid by Mayflower or one of the labor contractors, all the potential class members work together in the laundry facility and perform the same or similar tasks side-by-side.[23] For example, the ironing machines are operated by workers paid by

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[15] Ex. 4 (Kalra Dep.) 33:1-33:16, 57:6-57:15, 63:10-21, 71:1-71:17; Ex. 14 (7/4/12 email at Bates no. CONFIDENTIAL GUSTOV-000723).
[16] Ex. 15 (7/9/13 email chain at Bates no. CONFIDENTIAL GUSTOV-000868); Ex. 16 (7/8/15 email chain at Bates no. CONFIDENTIAL GUSTOV-001052).
[17] Ex. 4 (Kalra Dep.) 227:14-229:5; Ex. 12 (M. Ramirez Answer to Interrog. No. 12).
[18] Ex. 2 (Kalra Decl., ECF No. 75-2) ¶ 8.
[19] Ex. 4 (Kalra Dep.) 328:12-335:13; Ex. 2 (Kalra Decl., ECF No. 75-2) ¶ 9.
[20] Ex. 4 (Kalra Dep.) 44:7-44:13; Ex. 12 (M. Ramirez Answer to Interrog. No. 19); Ex. 17 (Cedillos Answer to Interrog. No. 19).
[21] Ex. 4 (Kalra Dep.) 44:7-44:13).
[22] Ex. 10 (Chicas Decl., ECF No. 27-2) ¶ 4; Ex. 5 (Cedillos Decl., ECF No. 27-1) ¶ 5; Ex. 9 (Vargas Decl., ECF No. 27-3) ¶ 4; Ex. 6 (Nunez Decl., ECF No. 27-4) ¶ 4.
[23] Ex. 4 (Kalra Dep.) 38:3-14, 42:4-9, 51:1-53:12; Ex. 18 (Kanu Dep.) 47:11-49:7; Ex. 12 (M. Ramirez Answer to Interrog. No. 19).

both Mayflower and the labor contractors at the same time.[24] In addition, in the soil room there are approximately twenty workers, thirteen or so paid by labor contractors and six or seven paid by Mayflower, all of whom perform the same tasks.[25]

5. Almost all workers, whether paid by Mayflower or by a labor contractor, are scheduled to work five days a week.[26] The workers are employed for varying periods of time, many of them for over a year. For example, Marcelo (last name unknown), who is paid by Service Industry Solutions, had worked at the laundry for two to three years as of June 2015.[27] Ms. Cedillos-Guevara worked from summer of 2012 until November 2013.[28] Ms. Vargas worked at Mayflower from March 2008 until March 2014.[29] Mr. Nunez worked at the laundry from December 2011 until March 2013.[30] Ms. Giron worked there from April 2006 until December 2014.[31]

6. Throughout the covered period, workers, whether paid by Mayflower or a labor contractor, have punched in and out using Mayflower's time clock, which contains both a fingerprint reader and a place for the worker to enter their personal identification number (PIN).[32] Ms. Manisha Ravikumar Jayachandran, the office administrator at Mayflower,[33] manually inputs the data from the time clock into a spreadsheet and sends that information to the

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[24] Ex. 18 (Kanu Dep.) 47:11-48:3, 48:15-49:7.
[25] Ex. 4 (Kalra Dep.) 41:8-19, 42:7-9.
[26] Ex. 4 (Kalra Dep.) 72:4-5.
[27] Ex. 4 (Kalra Dep.) 45:13-15.
[28] Ex. 5 (Cedillos Decl., ECF No. 27-1) ¶ 1.
[29] Ex. 9 (Vargas Decl., ECF No. 27-3) ¶ 1.
[30] Ex. 6 (Nunez Decl.) ¶ 1.
[31] Ex. 19 (Giron Decl., ECF No. 71-2) ¶¶ 1, 3, 7; Ex. 20 (Giron Answer to Interrog. No. 12).
[32] Ex. 3 (Ravikumar Dep.) 36:14-20, 39:19-40:10; Ex. 4 (Kalra Dep.) 83:17-84:2; Ex. 1 (Mayflower Answer to Interrog. No. 8). It has come to the attention of Plaintiffs that one of the labor contractors has recently installed its own time clock. It is unclear when this occurred and who uses this time clock. This one belated action initiated by one of the many labor contractors should not distract from the overwhelming evidence of joint employment.
[33] Ex. 3 (Ravikumar Dep.) 4:14-21, 13:17-14:11

labor contractors.[34] These spreadsheets, produced by Mayflower, list the hours worked and the hourly rates for each worker paid by the labor contractors. [35]

7. There are three production managers at the Mayflower laundry: Vivek Deshmukh, Bill Harvey, and Moseray Kanu.[36] These managers are employed by and paid through either Mayflower or Advantech, which is Mayflower's management company.[37] Mr. Deshmukh is the manager of the health care area of the facility.[38] Mr. Harvey is the manager of the soil room.[39] Mr. Kanu supervises the hospitality area.[40]

8. The Mayflower managers set the schedules for all of the workers, regardless of whether they are paid by Mayflower or the labor contractors.[41] The Mayflower managers control the hours of the workers, including their start times and their dismissal times, and often require them to stay longer than their scheduled shifts.[42] Workers generally do not have set end times. Instead, the manager tells them when they can leave at the end of the day—a time that is dependent on when the work is done.[43] For example, Mr. Kanu testified that he tells the workers he supervises what time they can go home each night only when the last production task for that shift has begun; this end time varies from day to day.[44] Thus, workers paid both by Mayflower and by the labor contractors are dependent day-to-day on the Mayflower managers to set their

[34] Ex. 3 (Ravikumar Dep.) 18:30-19:6, 19:17-20:2; Ex. 13 (Mehta Answer to Interrog. No. 8); Ex. 1 (Mayflower Answer to Interrog. No. 19).
[35] Ex. 3 (Ravikumar Dep.) 24:3-26:8; Ex. 4 (Kalra Dep.) 178:1-179:7.
[36] Ex. 4 (Kalra Dep.) 34:13-17).
[37] Ex. 4 (Kalra Dep.) 35:21-36:3; 44:10-12; Ex. 13 (Mehta Answer to Interrog. No. 3).
[38] Ex. 4 (Kalra Dep.) 34:18-35:14.
[39] Ex. 4 (Kalra Dep.) 35:18-19; Ex. 13 (Mehta Answer to Interrog. No. 3).
[40] Ex. 4 (Kalra Dep.) 35:16-17.
[41] Ex. 4 (Kalra Dep.) 25:9-11, 26:15-27:4, 34:7-11, 42:10-43:3, 43:7-44:6; Ex. 18 (Kanu Dep.) 35:17-37:18; Ex. 1 (Mayflower Answer to Interrog. No. 11).
[42] Ex. 18 (Kanu Dep.) 49:16-19; Ex. 7 (Kaneria Answer to Interrog. No. 10, 15); Ex. 17 (Cedillos Answer to Interrog. No. 15).
[43] Ex. 18 (Kanu Dep.) 49:16-19, 135:3-20, 137:6-139:8; Ex. 4 (Kalra Dep.) 197:19-198:6).
[44] Ex. 18 (Kanu Dep.) 138:10-17.

schedule. In another example, Ms. Cedillos-Guevara generally began work at 7:00 a.m., and finished anywhere from 2:30 to 8:00 p.m., depending on when Mr. Kanu told her she could leave.[45] Other Plaintiffs testified similarly.[46] Some days the Mayflower manager might call in a group of workers to begin early. For example, if there is a problem with the machinery the day before and an order is not be completed, workers might be called in an hour earlier the next morning to finish the task.[47]

9. The Mayflower managers are responsible for training all workers at the laundry facility.[48] For example, Mr. Kanu, who oversees two folding machines and four ironing machines, testified that he trains all new workers in the hospitality area.[49] If a new worker is hired for ironing, he will first train them in the small piece area, because that equipment is "lighter and easier to operate."[50] The Mayflower managers are responsible for training new workers irrespective of which, if any, labor contractor pays them.[51]

10. Mayflower managers supervise all workers in the laundry, regardless of which entity pays them.[52] For example, Ms. Cedillos-Guevara was paid by East to West Enterprises, but was supervised by Mr. Kanu.[53] Ms. Chicas Rodriguez, who was paid by Industry Cleaning

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[45] Ex. 17 (Cedillos Answer to Interrog. No. 10).
[46] Ms. Giron came to work just before 7:00 am, and could be sent home from work as early as 9:00 am or as late as 8:30 pm, depending on when Mr. Kanu told her to leave. Ex. 20 (Giron Answer to Interrog. No. 10). Ms. Vargas was usually scheduled to work from 7:00 am until either 5:30 or 6:00 pm, but was sometimes required to come in at 6:00 am and work as late as 9:00 pm. Ex. 21 (Vargas Answer to Interrog. No. 8).
[47] Ex. 4 (Kalra Dep.) 191:3-8.
[48] Ex. 18 (Kanu Dep.) 29:11-30:13, 34:14-35:1; Ex. 4 (Kalra Dep.) 50:15-50:21).
[49] Ex. 18 (Kanu Dep.) 29:13-16, 30:16-18, 32:14-18.
[50] Ex. 18 (Kanu Dep.) 30:16-31:14.
[51] Ex. 18 (Kanu Dep.) 34:19-35:1.
[52] Ex. 4 (Kalra Dep.) 43:7-14, 53:9-12.
[53] Ex. 5 (Cedillos Decl., ECF No. 27-1) ¶¶ 4, 13.

Service and Service Industry Solutions, was also supervised by Mr. Kanu.[54] Vladimir (last name unknown) is paid by Argo and supervised by Mr. Deshmukh.[55]

11. If there is a production or scheduling issue, the Mayflower managers generally handle it themselves, although they may also call the owners or managers of the labor contractors.[56] For example, Mr. Kanu stated that if a worker is late for his shift, Mr. Kanu might call the worker first.[57] If he cannot get ahold of the worker, then he may call the labor contractor.[58] Additionally, the workers sometimes call or text Mr. Kanu to tell him they are running late.[59] Mr. Kanu has the numbers of all the workers saved in his cell phone without differentiating between who is paid by Mayflower and who is paid by a labor contractor.[60] If there is a production issue on the plant floor, the Mayflower manager speaks directly to the worker to resolve it. For example, if a piece of linen falls on the floor, Mr. Kanu would tell the worker, regardless of whether he is paid by Mayflower or a labor contractor, that linen cannot be dropped on the floor and that he must pick it up.[61] This supervision by the Mayflower managers applies to issues of timeliness and task prioritization as well. For example, Mr. Kanu will reprimand a worker who is working on Task A when he is supposed to be completing Task B.[62] If a production issue is ongoing, then the Mayflower floor managers speak to Mr. Kalra. For example, if a worker paid by a labor contractor fell below producing three hundred pillowcases an hour, Mr. Kanu would first speak to that worker; if the issue continued, he would then notify

[54] Ex.10 (Chicas Decl., ECF No. 27-2) ¶¶ 5, 8.
[55] Ex. 4 (Kalra Dep.) 71:10-13, 74:6-9.
[56] Ex. 18 (Kanu Dep.) 51:16-52:20.
[57] Ex. 18 (Kanu Dep.) 72:12-73:10.
[58] Ex. 18 (Kanu Dep.) 73:4-6.
[59] Ex. 18 (Kanu Dep.) 73:11-19.
[60] Ex. 18 (Kanu Dep.) 74:12-75:11.
[61] Ex. 18 (Kanu Dep.) 177:10-178:8.
[62] Ex. 18 (Kanu Dep.) 178:15-179:3.

Mr. Kalra.[63] If a need arose for disciplinary action for a worker paid by a labor contractor, Mr. Kalra testified that he, after being informed of the issue by Mr. Kanu, would contact the appropriate labor contractor, who would come speak to the worker.[64]

12. While Mayflower does not dispute that it controls the actual work performed by the workers at the laundry facility, it claims that its managers do not handle personnel matters directly. Instead, it claims that these matters are handled by "a point man in the plant from the[] vendors" who handles personnel matters. Although it claims that it does not directly supervise the workers regarding personnel matters, it does not dispute that the "point men" are in turn supervised by Mayflower, not by the labor contractors.[65] Thus, Mayflower managers have direct or indirect control on all matters regarding the workers.

At least three labor contractors have or had a "point person" who, in addition to his production duties at Mayflower, serves as the liaison between the Mayflower supervisors, the labor contractor workers, and the labor contractors.[66] This "point man" role is an informal assignment.[67] These point persons are supervised by Mayflower floor managers and/or plant manager Mr. Kalra, and, at least in the case of the Argo point person, are assigned the extra role as point person by Mayflower.[68] For example, Marcelo (last name unknown) is paid by Service Industry Solutions and does scale work and the creation of customer delivery tickets in the laundry.[69] However, Marcelo is also the point person for Service Industry Solutions at the laundry, which means that if any workers paid through Service Industry Solutions have personal,

[63] Ex. 18 (Kanu Dep.) 179:9-180:13.
[64] Ex. 4 (Kalra Dep.) 69:1-8.
[65] Ex. 4 (Kalra Dep.) 43:7-44:6.
[66] Ex. 4 (Kalra Dep.) 43:7-44:6, 61:10-62:6, 63:10-21; 74:12-18.
[67] Ex. 4 (Kalra Dep.) 73:15-21.
[68] Ex. 4 (Kalra Dep.) 46:10-11, 73:15-21, 74:6-7.
[69] Ex. 4 (Kalra Dep.) 45:3-12; Ex. 18 (Kanu Dep.) 53:5-11.

as opposed to production, issues, they are to go through Marcelo, and if there are Spanish interpretation needs, Marcelo may serve as interpreter to facilitate communication between the individual production worker and Mayflower.[70] Marcelo's supervisor is Mr. Kalra.[71] For Argo, the point person is currently Vladimir (last name unknown).[72] Vladimir was hired in the summer of 2015 for production work, through Argo but at Mayflower's request, and—because he is a male who speaks Russian, and many of female employees of Argo are also Russian speakers—Mayflower decided that Vladimir would be Argo's point person.[73]

13. The labor contractors conduct some of their business regarding the workers they pay at the Mayflower laundry facility itself. When representatives from the labor contractors come to the plant, they do not supervise production work.[74] Rather, they come at Mr. Kalra's request; he asks that the labor contractors to come "at least two, three times a week to talk to [their] people."[75] Valentin "Villy" Abgaryan , from Argo Management Group and Villy's Corporation, comes to the plant two to four days a week to talk with "his own people."[76] John Williams, from East to West Enterprises and North East Employment, comes to the plant approximately three times per week to "talk to his own people."[77] If there is an ongoing disciplinary issue that Mr. Kalra brings to the appropriate labor contractor's attention, a representative from that entity comes to the plant to speak to the worker.[78] Additionally,

[70] Ex. 4 (Kalra Dep.) 43:7-44:6.
[71] Ex. 4 (Kalra Dep.) 46:10-11.
[72] Ex. 4 (Kalra Dep.) 63:10-21.
[73] Ex. 4 (Kalra Dep.) 63:10-21, 71:10-11, 73:6-11, 73:15-74:5.
[74] Ex. 4 (Kalra Dep.) 75:21-76:6.
[75] Ex. 4 (Kalra Dep.) 75:16-20.
[76] Ex. 4 (Kalra Dep.) 62:19-63:9, 315:19-316:7.
[77] Ex. 4 (Kalra Dep.) 75:11-20.
[78] Ex. 4 (Kalra Dep.) 69:1-8.

Marcelo, the Service Industry Solutions point person, passes out paychecks to the workers at the laundry, as does Esther Williams from East to West Enterprises/North East Employment.[79]

14. Workers may switch from being directly employed by one labor contractor to another without changing their role at Mayflower. For example, when Ms. Lopez joined this lawsuit and John Williams stopped paying her, Mr. Kalra told her to submit an application to Industry Cleaning Service to continue working at the laundry.[80] Although Ms. Lopez continued to work at the laundry, her application for Industry Cleaning Service was not accepted, so she completed an application for Villy's Corporation.[81] When this application was not accepted, she stopped working at Mayflower because she was not getting paid.[82] During this time, Ms. Lopez continued to perform the same work tasks: ironing, catching, throwing, and counting.[83] Similarly, when Maria Ramirez informed Mr. Kalra that East to West Enterprises and John Williams were not paying her correctly and that she would stop working for Mayflower unless she received her paychecks from Mayflower directly, Mayflower began paying her.[84] During this time, Ms. Ramirez continued to be responsible for the same work tasks, folding washcloths and putting orders together, irrespective of the change in who was paying her.[85]

Argument

As is evident from the facts described above, the economic reality of the situation for the workers in the Mayflower Laundry is that they have two employers: their labor contractor and Mayflower. The joint employment relationship at Mayflower falls readily into the second and third examples of joint employment provided by the Department of Labor's joint employer regulation. *See* 29 C.F.R. § 791.2(b). Mayflower is also a joint employer under the Fourth Circuit's new *Butler* hybrid test, which combines elements of the common law of agency with the "economic realities" test. *Butler*, 793 F.3d at 406, 410-15. *Cf. Schultz v. Capital Int'l Sec. Inc.*, 466 F.3d 298, 304, 306 and n.2 (4th Cir. 2006); *Quinteros*, 532 F.Supp.2d at 773-76; *Jennings v. Rapid Response Delivery, Inc.*, No. 11-0092, 2011 WL 2470483, at **2-3 (D. Md. June 16, 2011).

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[79] Ex. 18 (Kanu Dep.) 53:6-11, 92:9-16.
[80] Ex. 22 (Lopez Decl., ECF No. 71-3) ¶¶ 12-14, 16.
[81] Ex. 22 (Lopez Decl., ECF No. 71-3) ¶¶ 18-21.
[82] Ex. 22 (Lopez Decl., ECF No. 71-3) ¶¶ 22-26.
[83] Ex. 22 (Lopez Decl., ECF No. 71-3) ¶¶ 3, 18.
[84] Ex. 12 (M. Ramirez Answer to Interrog. No. 12).
[85] Ex. 12 (M. Ramirez Answer to Interrog. No. 10).

I. Mayflower is a joint employer within the second and/or third regulatory categories.

The facts of the employment relationship between Mayflower and the Plaintiffs fit squarely within the FLSA joint employer regulations quoted above at page 3. Because (1) the production work done in Mayflower's laundry facility benefits both the labor contractors and Mayflower and the labor contractors are acting directly in the interest of Mayflower, *see* 29 C.F.R. § 791.2(b)(2), and/or (2) Mayflower and the labor contractors are not completely dissociated with respect to the workers paid by the labor contractors and share control of those workers, with Mayflower ultimately controlling the labor contractors, *see* 29 C.F.R. § 791.2(b)(3), Mayflower is a joint employer within the FLSA regulations. When the relationship between two employers fits into the regulatory examples, there is joint employment. *Schultz,* 466 F.3d at 305-06; *Luna-Reyes v. RFI Const., LLC*, No. 1:14CV235, 2015 WL 3463484, at *5 (M.D.N.C. June 1, 2015); *Deras v. Verizon Md., Inc.,* No. DKC 09-0791, 2010 WL 3038812, at **4-7 (D. Md. July 30, 2010).

Here, the labor contractors exist solely to act in the interest of Mayflower: they hire additional workers to send to the laundry when Mayflower has greater labor force needs, and lay off workers when Mayflower's labor needs lessen, and they work with Mayflower to ensure the workers are performing their jobs efficiently. Statement of Undisputed Material Facts ("SMF"), *supra* ¶ 2. The owners of the labor contractors come to the plant a few times a week at the request of Mr. Kalra. *Id.* ¶ 13. If there are discipline issues with the workers employed by labor contractors, floor managers like Mr. Kanu report them to Mr. Kalra, who asks the labor contractors to come in to speak with the workers. *Id.* ¶11.

Mayflower requests that there be workers to fulfill the role of "point person" with each labor contractor, and assists in deciding who will fill each of these roles. The "point men" for each labor contractor are supervised by Mayflower managers, paid by the labor contractors, and serve as Spanish and/or Russian interpreters between the Mayflower managers and the non-native-English speakers associated with each labor contractor who are working at the laundry. *Id.* ¶ 12. For example, when Mayflower needed a "point person" for Argo, it told Argo's management, who then hired someone who speaks both Russian and English and placed him at the plant as both a regular laundry worker and a point person for Mayflower's translation needs and to answer personal questions. *Id.* The labor contractors and Mayflower both benefit from the work done by the labor contractor workers—Mayflower through the money it makes from hotel and hospital contracts that are fulfilled through production by workers paid, in part, by labor contractors, and the labor contractors through the monies they earn from their contracts with Mayflower. *Id.* ¶ 1. Mayflower and the labor contractors are not at all dissociated with respect to the employment of the workers; Mayflower ultimately controls both the workers and the labor contractors. As such, Mayflower is a joint employer within the regulatory examples under the FLSA. *See* 29 C.F.R. § 791.2(b).

II. In addition, the factors under the Fourth Circuit's *Butler* test establish that Mayflower is a joint employer.

The Fourth Circuit has held that, in addition to reviewing the examples in the regulations, courts should consider other factors that define the economic reality of the relationship between the parties in determining whether joint employment exists. *See Schultz,* 466 F.3d at 306 n. 2 ("In some cases it may be useful for a court to consider factors such as those listed in [*Bonnette v. California Health and Welfare Agency*, 704 F.2d 1465, 1469–70 (9th Cir. 1983)] and *Zheng v. Liberty Apparel Co.,* Inc., 355 F.3d 61, 71-72 (2d Cir. 2003), in determining whether there are joint employers within the meaning of the [Fair Labor Standards] Act and the regulation"); *Quinteros v. Sparkle Cleaning, Inc.,* 532 F. Supp. 2d at 774.

This Circuit's test for the doctrine of joint employment was recently articulated in *Butler v. Drive Automotive Industries of America, Inc.,* 793 F.3d 404 (4th Cir. 2015). *Butler* set forth a nine-factor "hybrid test" that looks at both the economic realities of the relationship between the worker and the purported joint employer and the common law of agency. *Id.* at 410-15. Although *Butler* was a Title VII employment discrimination action, the *Butler* court did not cabin its test to Title VII claims and noted that the FLSA has the broadest definition of employee. Thus, if the *Butler* test is sufficiently broad to define joint employment for Title VII, it would be an appropriate test for joint employment under the FLSA (if anything, perhaps too narrow). *See Butler,* 793 F.3d at 412 n.10. Applying the nine *Butler* factors to the undisputed facts of this case shows that Mayflower is a joint employer of the workers paid by the labor contractors.

A. Mayflower has the authority to hire and fire the individual, although it may not always exercise that authority.

Viewing the facts in the light most favorable to Mayflower, the facts demonstrate that at the least Mayflower plays a substantial role in hiring and firing the workers paid by the labor contractors. Additional workers are hired from the labor contractors at Mr. Kalra's request, and, when Mayflower's production needs change, workers are laid off at Mr. Kalra's direction. SMF, *supra,* ¶ 2. There is no dispute that Mayflower hires workers through the labor contractors to meet its production needs and that Mr. Kalra must approve the placement of any worker at the facility. *Id.*

Although Mayflower claims that it cannot directly fire workers paid by the labor contractors, there is no dispute that it plays at least a substantial role in firings, and that it controls the “point men” who may recommend firing. Moreover, although Mr. Kalra insists that Mayflower managers do not have the power to hire and fire and that Mayflower has never advised a labor contractor to hire or fire a particular employee,[86] at least two plaintiffs paid by labor contractors undisputedly found out they no longer had employment at the laundry when Mayflower posted a list of names and told workers that if their name was not on the list, they no longer had a job.[87] Moreover, while Mr. Kanu maintains that he does not have the authority to fire workers and that he has never fired anyone,[88] workers paid by both Mayflower and labor contractors report being directly fired by Mr. Kanu, and he has not disputed those specific reports. For example, Mr. Kanu told Maria Ramirez, who was paid by Mayflower at the time, that she was fired after she missed a day of work to take her son to the hospital.[89] Similarly, Mr. Kanu fired Ms. Chicas Rodriguez when she requested to do lighter work temporarily after suffering a miscarriage, even though Ms. Chicas Rodriguez was being paid by Industry Cleaning Service and Service Industry Solutions.[90] Ms. Vargas and Mr. Nunez also report being fired by Mr. Kanu even though they were being paid by labor contractor entities.[91]

In sum, it is undisputed that Mayflower plays a substantial role in hiring and firing the labor contractor workers.

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[86] Ex. 2 (Kalra Decl., ECF No. 75-2) ¶¶ 8, 10; Ex. 4 (Kalra Dep.) 66:8-69:8.
[87] Ex. 23 (Garcia Answer to Interrog. No. 12); Ex. 24 (Sosa Answer to Interrog. No. 12).
[88] Ex. 18 (Kanu Dep.) 168:12-15, 170:12-20.
[89] Ex. 12 (M. Ramirez Answer to Interrog. No. 12).
[90] Ex. 10 (Chicas Decl., ECF No. 27-2) ¶¶ 5, 22-26.
[91] Ex. 9 (Vargas Decl., ECF No. 27-3) ¶¶ 5, 23; Ex. 6 (Nunez Decl., ECF No. 27-4) ¶¶ 5, 20.

B. Mayflower exercises day-to-day supervision of the individual, including employee discipline.

There is no dispute that, as a practical matter, the sole supervisors of the workers paid through labor contractors are the Mayflower managers: Mr. Kanu, Mr. Harvey, and Mr. Deshmukh. SMF, *supra* ¶ 8-11. The workers are told when to arrive by the Mayflower managers, with these managers calling them to come in early if there is additional work to do. *Id.* ¶ 11. The ending time of each individual's work day is also governed by the Mayflower managers. *Id.* Mr. Kanu testified that if a worker who is paid by the labor contractors is late, he communicates with that worker directly. *Id*. All parties agree that both scheduling and production issues are handled by Mayflower managers. *Id.* Viewing the facts in the light most favorable to Mayflower—and thus accepting for the purposes of this motion that discipline of workers paid by the labor contractors is ultimately handled by the labor contractors—there is no dispute that Mayflower managers handle all initial discipline of these workers. *Id.* The labor contractors only speak to their workers about problems at the request of Mr. Kalra. *Id*. Furthermore, while Mayflower may allege that non-production supervision is handled by the "point man in the plant from these vendors," Mr. Kalra stated that he himself is the supervisor of one of these point men. *Id.* ¶ 13. The only plausible inference is that on a day-to-day basis, Mayflower both directly (through the Mayflower managers) and indirectly (through the labor contractor point men whose authority is ultimately traceable to Mayflower) supervises all workers in its laundry facility.

C. Mayflower furnishes the place of work and equipment used.

There is no dispute that the premises worked at and all the equipment used is furnished by Mayflower. SMF ¶¶ 3-4. All workers are well-aware that they are using Mayflower machinery and working on Mayflower premises. *Id.*

D. Mayflower and the contractors share possession of and responsibility over employment records.

Both the contractors and Mayflower play a role in paying the workers and maintaining records regarding payment. Mayflower's office administrator manually inputs all information from the time clock into payroll sheets to send to the labor contractors. SMF ¶ 6. The managers are given information on the workers hired through labor contractors, including their phone numbers. *Id.* ¶ 11. Mayflower, in conjunction with the labor contractors, sets the hourly wages for the labor contractor workers, and Mr. Kalra exercises the authority to deny requested raises for these workers. *Id.* ¶ 2.

E. The workers at Mayflower are hired by the contractors solely to work at Mayflower.

The labor contractors hire workers at Mayflower solely to work at Mayflower—thus, when they are no longer needed by Mayflower, they are terminated. SMF ¶ 5. The period of time worked varies—some workers paid by labor contractors have worked for Mayflower for over a year. SMF ¶ 7. Labor contractor workers are scheduled to work full-time; they are not temporary employees, but rather just as permanent as the workers at the laundry who are paid by Mayflower. *Id.*

F. Mayflower managers train all the workers, no matter who pays them.

Mayflower, through its floor managers like Mr. Kanu, trains all new workers in the Mayflower Laundry, including those paid by labor contractors, on the machines they will be using. SMF ¶ 9. There is no evidence that the labor contractor entities provide formal or informal training of any kind.

G. There is no difference in duties between Mayflower laundry workers and workers paid by contractors.

There is no dispute that all production workers in the Mayflower laundry facility, whether hired directly by Mayflower or through labor contractors, perform the exact same work. SMF ¶ 4. At any given time, there are both direct and indirect employees working in the laundry; most machines require multiple workers, and there is a mix of direct and indirect employees working at each individual machine, engaged in the exact same tasks. *Id.* The managers have the same expectations for all workers, no matter who pays them.[92] The production policies apply to all workers, no matter who pays them.[93] There is no difference in the work duties between employees paid by Mayflower and those paid by labor contractors; Mayflower's vice president of operations admitted that "it doesn't matter" who a worker on a particular machine is paid by.[94]

H. The workers in this case are assigned solely to the putative employer, Mayflower.

The workers at the laundry who are paid by the labor contractors work solely at the laundry. These workers are employed full-time at the laundry, and many have worked at the laundry for over a year. SMF ¶ 5.

I. Workers intended to be employed and to work at Mayflower Textile Services.

Plaintiffs intended to work at Mayflower, and in at least one instance, being hired through the labor contractors was how they were instructed by Mayflower to do so.[95] Moreover, the workers paid by the labor contractors know that they are working on Mayflower premises and using Mayflower equipment, working alongside Mayflower employees who are performing the same tasks, and being trained and supervised by Mayflower managers. SMF ¶¶ 2-4, 7-13.

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[92] Ex. 18 (Kanu Dep.) 49:5-7.
[93] Ex. 18 (Kanu Dep.) 86:7-87:4.
[94] SMF ¶ 4; Ex. 4 (Kalra Dep.) 105:12-106:4.
[95] SMF ¶¶ 2, 14; Ex. 4 (Kalra Dep.) 227:14-228:8, 228:19-229:5.

Thus, all nine *Butler* factors weigh in favor of finding that Mayflower is a joint employer of all of the workers in its laundry, regardless of whether they are hired through labor contractors. In its *Butler* decision, the Court of Appeals for the Fourth Circuit offered a frank analysis of the employment environment today in America when it recognized that

> [T]he joint employment doctrine also recognizes the reality of changes in modern employment, in which increasing numbers of workers are employed by temporary staffing companies that exercise little control over their day-to-day activities. . . .
>
> The joint employment doctrine thus prevents those who effectively employ a worker from evading liability by hiding behind another entity, such as a staffing agency. . . .

793 F.3d at 410. The relationship between Mayflower and its labor contractors/staffing agencies is exactly the type of relationship of which the Court is speaking: one in which Mayflower seeks to evade liability and responsibility by contracting out its staffing needs.

As demonstrated by the factor-by-factor analysis above, Mayflower is a joint employer of the labor contractor workers as a matter of law. Mayflower exercises substantial day-to-day control over these workers, who perform the same work as the Mayflower workers while being supervised by the same managers in essentially the same manner. In short, Mayflower, "while contracting in good faith with…otherwise independent compan[ies], has retained for itself sufficient control of the terms and conditions of employment of the employees who are employed by the other employer." *Butler*, 793 F.3d at 408 (citing *Torres–Negrón v. Merck & Co.*, 488 F.3d 34, 40 n. 6 (1st Cir. 2007)). Regardless of Mayflower's business model, the economic realities of the relationship make clear that Mayflower is a joint employer of these labor contractor workers.

Conclusion

Viewing the facts and drawing all plausible inferences in the light most favorable to Mayflower, as a matter of law, no reasonable jury could come to any conclusion other than that Mayflower is a joint employer of Plaintiffs and all other hourly workers in the Mayflower Laundry.

Respectfully submitted,

/s/

Andrew D. Freeman (Fed. Bar No. 03867)
Brooke E. Lierman (Fed. Bar No. 17879)
BROWN, GOLDSTEIN & LEVY, LLP
120 East Baltimore Street, Suite 1700
Baltimore, MD 21202
Tel: (410) 962-1030
Fax: (410) 385-0869
adf@browngold.com
blierman@browngold.com

Daniel A. Katz (Fed. Bar No. 13026)
Lucy B. Bansal (Fed. Bar No. 06639)
The Law Offices of Gary M. Gilbert & Associates
1100 Wayne Avenue, Suite 900
Silver Spring, MD 20910
Tel: (301) 608-0880
Fax: (301) 608-0881
dkatz@ggilbertlaw.com
lbansal@ggilbertlaw.com